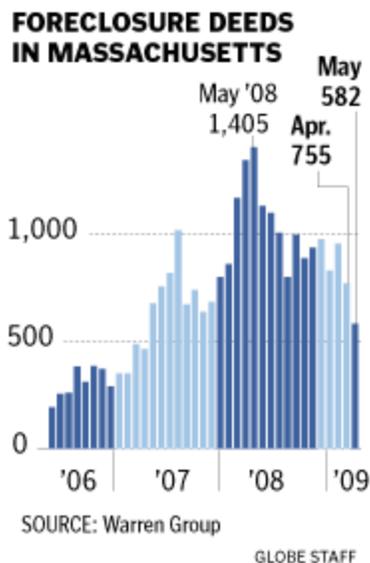


Massachusetts Foreclosures Down Almost 60%, A Good Sign or Statistical Aberration?

Posted by Richard Vetstein under [Foreclosure](#), [Mortgage Crisis](#), [Mortgages](#), [Real Estate](#) ([edit this](#))
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The Boston Globe is [reporting](#) that foreclosures in Massachusetts took a steep dive in May, the second consecutive month they have fallen, according to data released yesterday by Boston real estate tracking firm Warren Group.



According to the Globe, there were 582 foreclosure deeds recorded in May, a 58.6 percent decrease from 1,405 during the same month in 2008, and a 24.3 percent drop from April.

Others attribute the drop to a [decision](#) in Massachusetts Land Court in late March that invalidated two foreclosures because the lenders failed to show proof they held titles to the properties. This decision is a product of the Massachusetts conveyancing practice struggling to keep up with modern mortgage lending practices. The ownership of a loan may be divided and freely transferred numerous times on the lenders' books, but the documentation actually on file at the Registry of Deeds often lags far behind. The Land Court decided that foreclosures were invalid when the lender brought the ownership documentation up-to-date after the foreclosure sale had already taken place. The decision has prompted concern throughout the industry and is stalling sales of foreclosed properties, real estate specialists say.

Based on discussions I have had with other real estate attorneys, up to 20% of all mortgages in Massachusetts may be affected by this title defect.

This is causing so much angst in the industry that title insurers are refusing to insure foreclosure titles affected by the problem. That means in cases where this issue is present, the lender cannot

foreclosure, and the real estate sits barren for the indefinite future. This is bad for the lender who is trying to get rid of a non-performing asset, for the potential buyers interested in purchasing foreclosed properties, and certainly for the neighborhoods affected by blighted foreclosed properties.

Here is a copy of a portion of a memo sent by Stewart Title Company to its local title agents suspending authorizations to issue title insurance over titles derived from foreclosures which are affected by this problem:

Date: April 22, 2009

To: All Massachusetts Issuing Offices

RE: Recent Land Court Decisions Requiring Suspension of Authorization to Insure
Massachusetts Titles Based on Foreclosures with Post-Foreclosure Assignments

Dear Associates:

As you may be aware, the Land Court issued two recent decisions that call into question the validity of several titles coming out of foreclosure.

The result of these two decisions is that titles based on foreclosures by an Assignee lender are potentially fatal unless the Assignment in question was executed and held by the foreclosing lender prior to the commencement of foreclosure under M.G.L. c. 244, §14. Foreclosures based on Assignments that were dated after the foreclosure sale were deemed invalid even if the Assignments were “backdated” (i.e., contained an “effective date”) prior to the first c. 244, §14 notices.

Accordingly, subject to certain exceptions discussed later in this Bulletin, until further developments in these cases and the law upon which these cases were decided, Stewart Title Guaranty Company is suspending authorization to insure titles derived from foreclosures where the recorded Assignment into the foreclosing Lender is not dated prior to the date of the first publication under c. 244, §14.

I will be monitoring the Land Court decision through what will surely be an appeal to the Supreme Judicial Court, the highest appellate court in Massachusetts.